

March 20, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND DECISION ON AN APPEAL FROM THRESHOLD DETERMINATION.

SUBJECT: Department of Development and Environmental Services File No. **B96C0147**

KYLE DEVELOPMENT
Threshold Determination Appeal

Location: 22601 SE 56th Street
Issaquah, Washington

Applicant: Kyle Development Company, Inc.
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Issaquah, WA 98027
Represented By: **Jerry Lutz**, Attorney At Law
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Appellant: Overdale Park Homeowners Association
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Represented By: **Tom Putnam**
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and Represented By: **Richard Pierson**
Attorney At Law
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SUMMARY OF RECOMMENDATIONS:

Division's Preliminary: Deny appeal
Division's Final: Deny appeal
Examiner: Deny appeal

Notice of appeal received by Examiner: December 23, 1996
Statement of appeal received by Examiner: December 23, 1996

EXAMINER PROCEEDINGS:

Pre-hearing Conference: January 28, 1997
Hearing Opened: February 28, 1997
Hearing Closed: March 12, 1997

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES/CONCERNS ADDRESSED:

- Road standards
- Traffic; level of service
- Drainage
- Aquifer/domestic well contamination

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. Proposal. Kyle Development Company, Inc., (the Applicant) proposes to construct a two-story, 29,500-square-foot office building on a site comprising approximately one acre. Parking for 94 vehicles is proposed.
2. Threshold determination. On November 19, 1996, the Department of Development and Environmental Services (DDES) published a Determination of Non-Significance (DNS). Exhibit No. 2. That is, the Department published its official determination that the proposed development would not create a significant adverse impact upon the environment and therefore would not require preparation of Environmental Impact Statement (EIS). Further, publication of a DNS inherently indicates that the issuing agency has determined that no special mitigating measures need be applied to the proposed development; that is, that the moderate or less than moderate impact upon the environment may be achieved by relying upon the standards, regulations or other controls which may be applied by the various agencies having jurisdiction (for example, Health, Roads, and Surface Water Management). In this regard, see Finding No. 7, below, particularly, Finding No. 7.a.
3. Appeal. On December 3, 1996, Overdale Park Homeowners Association (the Appellant) filed timely appeal from the above-described threshold determination. A pre-hearing conference, conducted by this Examiner on January 28, 1997, narrowed the appeal issues to these:
 - a. Overdale Park well system and aquifer. The well system, owned by the Appellant, serves 141 nearby homes. Did the Department erroneously disregard the impact of the

proposed development on that well?

- b. Traffic; SE 56th Street. Will decisions made by DDES and the King County Roads Division regarding entering sight distance, stopping sight distance and increased traffic volumes threaten traffic safety?
- c. Cumulative impact. Regarding each of the issues described above, has the cumulative impact of this project in association with neighboring projects been considered?

As noted in the Examiner's Pre-Hearing Order, the principal issue in this review is whether the threshold determination by DDES was "clearly erroneous". See Finding No. 7 for further explanation.

- 4. Well system and aquifer. Regarding concerns surrounding adequate protection from contamination of the Appellants' community well, the following findings are relevant:

- a. The Lower Issaquah Wellhead Protection Plan shows that the Kyle project is not within the recharge zone of the aquifer that serves the well. The Overdale well aquifer recharge is a product of regional geologic conditions and not local surface recharge conditions.
- b. The Wellhead Protection Delineation Report, commissioned by the Appellant, indicates that the Kyle property is not within the "capture zone" for the Overdale well, due to the characteristics of groundwater flow in the vicinity.
- c. Well logs indicate that the soil layered between the surface of the Kyle and the Overlake well properties, above, and the aquifer, below, is thick, very dense, and contains several clay layers that act as "aquitards" which prevent surface contamination from travelling downward sufficiently deep to reach the aquifer.
- d. During construction, water quality will be protected by the installation of a silt fence along the west and south sides of the property, as well as an on-site settling basin at the northwest corner of the property.
- e. The increased run-off from the proposed site during a 100-year storm is insufficient in quantity to trigger the County threshold for requiring stormwater detention.
- f. The projected increased run-off from the site during a 100-year storm is 0.31 cubic feet per second, an increase which comprises less than 7% of the capacity of the downstream 18-inch-diameter culvert.
- g. The completed project will run stormwater through an oil/water separator, as well as through a biofiltration swale before exiting the site. These improvements are included in the Applicant's proposal in response to King County Surface Water Management design standards.
- h. Due to topography, the potential for adverse impacts resulting from sheet flow emanating westward from the site is slight. Even if the on-site storm system were to be plugged, run-off from most of the property would overflow to the northwest, out the

proposed driveway, then westward in a ditch along the south side of SE 56th Street. A small portion of overflow run-off (resulting from system failure) could emanate southeasterly from the property. However, that flow would be naturally captured by existing topography which would direct it northward toward SE 56th Street. It would be located within the same topographical basin as the well pumphouse but would be immensely diluted when combined with storm run-off from surrounding properties within that same basin.

- i. The Appellants have experienced flooding of the property within which the Overdale well is located. There is no indication in the record that such flooding resulted in contamination. Future similar floods are unlikely due to conveyance improvements constructed by a neighboring development (Albertson's). That same neighboring development is required to install a new catch basin nearby which will provide an overflow relief area as well as additional access for cleaning the system.
5. Road standards. In the judgement of engineers representing the King County Roads Division, the proposed development will not impose a significant impact upon traffic safety related to road standard concerns (particularly, entering and stopping sight distance). The Roads Division reviewed and approved the Applicant's request for variance from King County Road Standards (KCRS) regarding entering and stopping sight distance. The Appellant opposes the conditions of road variance as being insufficient and/or opposes issuance of the variance. Based upon the variance standards contained in KCC 14.42.060¹. The Roads Division took into consideration or required the following sight-distance-related improvements through its variance action:
- a. SE 56th Street will be widened to include a 12-foot-wide center lane to accommodate ingressing left turns and egressing right turn merges.
 - b. The remaining two lanes will be 11 feet wide. Eight-foot-wide paved shoulders also will be provided.
 - c. The frontage of the property will be improved with curb, gutter and sidewalk consistent with KCRS specifications.
 - d. Traffic channelization must provide a minimum of 430 feet of entering sight distance and 300 feet of stopping sight distance.²
 - e. Street lighting will be provided in the vicinity of the project entrance and roadway channelization.

¹KCC 14.060; variances: Variances from these standards may be granted by the Engineer upon evidence that such variances are in the public interest, and that requirements for safety, function, fire protection, appearance, and maintainability based upon sound engineering judgement are fully met...

²The proposal actually shows even greater distances, but final design has not yet occurred. It is normal and routine for threshold determinations to occur prior to final design.

DDES has concluded that the safety concerns are appropriately mitigated by the Roads Division's requirements, considering the extensive roadway redesign; increased sight distance to occur; actual speeds measured at the adjacent curve (32 mph, which is less than the KCRS design speed of 35 mph); placement of speed bumps nearby; posted speed limits of 25 mph in front of the proposed development; and a posted advisory speed of 15 mph for the nearby curve. The Appellant argues that the steep gradient of SE 56th Street, as well as its curvature and travel speeds, have not been properly or sufficiently taken into consideration.

6. Traffic; Level of Service. The proposed development, when fully occupied, will generate approximately 5,700 average daily trips, which is 50% of the ADT capacity of the existing two-lane street and only one-third of the capacity of the three-lane section which is required to be constructed as discussed in the preceding finding. Traffic analysis included a 3% "background" traffic volume growth factor, with a 1997 horizon year (the expected year of project completion and occupancy). The Level of Service at the nearby SE 56th Street/East Lake Sammamish Boulevard intersection is calculated at LOS E overall, with one direction LOS F, with or without the proposed development. Westbound traffic at the intersection, as a result of the traffic generated by the proposed development, will experience an additional 3-second wait at that signal-controlled intersection. The Applicant is required to pay \$130,000 in traffic impact fees, to be directed as a "fair share" mitigation impact toward the cost of traffic improvements in the general vicinity of the proposed development which are necessary to mitigate cumulative traffic volume impacts of this and other projects.

The Appellant argues that traffic impacts are not adequately considered, most particularly because a) the 1997 horizon year appears unrealistic, b) estimated traffic generation from the site may be underestimated, and, c) the LOS "F" leg at the SE 56th Street/East Lake Sammamish Boulevard intersection should be given greater weight.

7. Scope and standard of review. In Section D of its February 28, 1997 Preliminary Report to the Examiner (Exhibit No. 1), DDES correctly describes the scope and standard of review applicable here. Section D of Exhibit No. 1 is adopted and incorporated here by this reference. In addition, the following review standards apply:
 - a. WAC 197-11-350(1), -330(1)(c), and -660(1)(3). Each authorize the lead agency (in this case, the Environmental Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.
 - b. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the Responsible Official shall be entitled to "substantial weight". Having reviewed this "substantial weight" rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency "negative threshold determination" is whether the action is "clearly erroneous". Consequently, the administrative decision should be modified or reversed if it is:

...clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.

1. In addition to the considerations addressed in the conclusions which follow, it should be noted that the scale of probable impacts is relevant when considering whether there will be a probable significant adverse impact. It is doubtful that any of the "potential impacts of concern" in this case reach the scale or size of probable significant adverse impact. For instance, even if the Appellant's arguments were wholly accepted with respect to the entering sight distance and stopping sight distance issues, it would not necessarily follow that an EIS or MDNS should be prepared as a result. These are simple little road variance issues; not issues of sufficient scale to cause "probable significant adverse impact" upon the environment. The project's small contribution to overall traffic volumes at the SE 56th Street/East Lake Sammamish Boulevard intersection suggests a similar conclusion with regard to Level of Service (LOS) issues. Likewise, the small contribution of drainage to overall area drainage patterns yields a similar conclusion with respect to wellhead protection. For these reasons, the DDES threshold determination cannot be regarded as clearly erroneous. The issues raised by the Appellant are reasonable reasons for concern. However, they do not approach the magnitude requisite for a Determination of Significance.
2. Momentarily setting aside Conclusion No. 1, regarding the scale of probable impacts, examination of the actual decisions made based upon the actual facts yields the very same conclusion: The DDES threshold determination in this matter is not clearly erroneous and therefore cannot be reversed. The facts of record comport delightfully with WAC 197-11350(1), -330(1)(c), and -660(1)(3), which, taken together, authorize DDES, when making threshold determinations, to consider mitigating measures that the Roads Division, DDES, and the Surface Water Management Design Manual will require regarding traffic and drainage.
3. As noted in Finding No. 7, above, the burden of proof falls on the Appellant in a threshold determination appeal. Considering the preponderance of the evidence, the Appellant has not successfully borne that burden in this case. Considering the above findings of fact and the entire hearing record, it must be concluded that the Division's threshold determination in this matter is not clearly erroneous and therefore cannot be reversed.

The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Division's determination.

4. In addition, the following conclusions apply:
 - a. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration of non-significance. Rather, the Appellant differs with the Division's assessment of impacts or the probability of potentially adverse impacts. For instance, in the Appellants' case, the notion of "significant adverse impact" depends upon speculation with respect to a variety of drainage system failures coinciding with certain weather conditions. Speculation with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination.

- b. Although the Appellant argues that the information on which the Division based its determination was insufficient, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous.
- c. There is a substantial amount of information in the record regarding the various impacts which have been asserted by the Appellant. The Division has not been unaware of these issues and has investigated (and reinvestigated) them, but has arrived at conclusions which differ from the Appellant's. The Division, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination of non-significance. The Division's judgement in this case must be given substantial weight.
- d. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Division's decision is not clearly erroneous and is supported by the evidence.

DECISION:

The threshold determination appeal regarding File No. B96C0147 is DENIED.

ORDERED this 20th day of March, 1997.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 20th day of March, 1997, to the following parties and interested persons:

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Ron Hoelscher, DDES/Building Services Division
Bill Lasby, Sea-King Co. Health Dept.
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MINUTES OF THE FEBRUARY 28, 1997 AND MARCH 5, 1997 PUBLIC HEARING ON DEPARTMENT
OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. B96C0147 - KYLE DEVELOPMENT
SEPA:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Steve Boyce, Aileen McManus, Richard Pierson, Jerry Lutz, Sam Kyle, Frank LeVeck, Tom Putnam, Christopher Brown, Terry Gibson, Steve Hood, Steve Kirk, and Robert Stanton.

The following exhibits were offered and entered into the record:

February 28, 1997:

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|---------------|--|
| Exhibit No. 1 | Department of Development and Environmental Services Preliminary Report to the King County Hearing Examiner for the February 28, 1997 public hearing |
| Exhibit No. 2 | Threshold Determination, November 1996 |
| Exhibit No. 3 | Environmental Checklist, July 30, 1996 |
| Exhibit No. 4 | Appeal letter, December 3, 1996 |
| Exhibit No. 5 | Site plan |
| Exhibit No. 6 | Memo from Steve Boyce to Stan Titus, February 14, 1997, Attachment 1-Exhibits List; Attachment 2-Witness List; Attachment 3-Motion for Dismissal |
| Exhibit No. 7 | AGRA Earth and Environmental Inc. Report to Sam Kyle, January 20, 1997 |
| Exhibit No. 8 | County Ordinance No. 11481 |

- Exhibit No. 9 Gibson Traffic Consultants, Traffic Study, May 26, 1995
- Exhibit No. 10 Draft Request for Variance, February 5, 1997
- Exhibit No. 11 Letter from Bill Lasby to Steve Boyce, December 3, 1996
- Exhibit No. 12 GIS map showing proposed projects in vicinity of subject property
- Exhibit No. 13 Quarter-section vicinity map
- Exhibit No. 14 Golder Associates well capture zone map
- Exhibit No. 15 Map showing 10-year capture zone for wells, showing Lower Issaquah Valley recharge area, by Golder Associates
- Exhibit No. 16 Road Gradient Plan & Profile of SE 56th Street
- Exhibit No. 17 Table 1 Design Sight Distances - Road Standards presented by Overdale
- Exhibit No. 18 Twelve (12) photos showing sight distance traffic problems, submitted by appellant
- Exhibit No. 19 Topographic map by SE 56th Street, by Kyle Development, annotated by Frank LeVeck
- Exhibit No. 20 Traffic Study by Gibson Traffic Consultants, dated March 1996
- Exhibit No. 21 Highway Capacity Manual Excerpt with Traffic Fundamentals Excerpt attached
- Exhibit No. 22 Manual of Uniform Traffic Control Devices Excerpt, Figure 4-2
- Exhibit No. 23 Photos of truck traffic danger on curve
- Exhibit No. 24 Gibson Traffic Presentation, February 28, 1997
- Exhibit No. 25 Applicant's Water Impact Analysis Documents
- Exhibit No. 26 Drawing of Proposed Building
- Exhibit No. 27 Sight Distance Analysis prepared for applicant
- March 5, 1997:
- Exhibit No. 28 Agra Earth & Environmental Report dated February 28, 1997 (Supplement to Exhibit No. 7)
- Exhibit No. 29 Map of aquifer recharge area (excerpt from Exhibit No. 25)
- Exhibit No. 30 SE 56th Street Drainage Diagram, and applicant's Drainage Plan
- Exhibit No. 31 Six (6) engineering site drawings, including Temporary Erosion and Sedimentation Control
- Exhibit No. 32 Photos of traffic on SE 56th Street curve
- Exhibit No. 33a Frank LeVeck's traffic line of sight analysis
- Exhibit No. 33b Frank LeVeck's Figure 1a and Conclusions on sight distance

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